

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5413 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWAN PUNAMBHAI SUTHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by an order dated 13th February 1999 passed by Commissioner of Police, Ahmedabad city, Ahmedabad in exercise of powers under sub-section [1] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short 'the PASA Act']. The grounds of detention indicate that the petitioner was involved in five offences punishable u/s 379 of IPC. The grounds of detention also indicate involvement of the petitioner in two incidents dated 9th

of January 1999 and 23rd of January 1999 involving him in criminal activities for which offence is not registered by the witnesses who have disclosed this fact, because of apprehension by the witnesses from the petitioner. The detaining authority recorded subjective satisfaction about the consistent involvement of the petitioner in illegal activities and use of force and intimidation by him to facilitate such illegal activities, resulting into a feeling of fear into the minds of people at large. The detaining authority was satisfied subjectively that the petitioner is a dangerous person as defined in section 2[c] of the PASA Act and after considering that no other remedy but detention under PASA Act was the only remedy that can be resorted to for preventing the petitioner from continuing his illegal and antisocial activities, the detaining authority passed the order detaining the petitioner under the PASA Act.

2. The petitioner challenges the detention order by preferring this petition under Article 226 of the Constitution of India. The petitioner has challenged the detention on many counts.

3. Mr. Patel, learned Advocate appearing for the petitioner while waiving all other grounds has pressed into service the ground that the detaining authority has failed to consider a less drastic remedy of getting the bail of the petitioner canceled and therefore, there is no application of mind by the detaining authority.

4. Mr. H.H. Patel, learned AGP appearing for the respondents authorities has submitted that the authority concerned has taken into consideration all relevant aspects and has also considered the option of resorting to an alternative less drastic remedy in the nature of externment. The other relevant aspects are also considered and thereafter, the subjective satisfaction is recorded. The Court therefore may not interfere with the order of detention and dismissed the petition.

5. A plain perusal of the grounds of detention and the affidavit in reply indicate that the detaining authority has not taken into consideration the possibility of workability of the alternative remedy in the nature of cancellation of bail which was granted to the petitioner. The only alternative remedy that is considered by the detaining authority is resorting to externment proceedings. In light of a Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai

Ghanchi v/s District Magistrate, dated 15th September, 1999, this would be a clear non-application of mind and the detention order therefore would stand vitiated.

6. The petition therefore deserves to be allowed on this ground alone and the same is allowed accordingly. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, on 13th of February, 1999 in respect of the petitioner Bhagwanbhai Punambhai Suthar, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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